

COPY

STATE OF CALIFORNIA
BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE

No. 64

NOTICE
OF
FORMAL PROCEEDINGS

TO: JUDGE ROBERT H. FUREY, JR.:

IT APPEARING THAT since January 3, 1983, and at all times herein, you have been a Judge of the Justice Court, Catalina Justice Court District, County of Los Angeles; and

Preliminary investigation having been made pursuant to the provisions of Rule 904 of the California Rules of Court concerning censure, removal, retirement or private admonishment of judges, during the course of which preliminary investigation you were afforded a reasonable opportunity to present such matters as you chose, and this Commission as a result of said preliminary investigation, having concluded that formal proceedings to inquire into the charges against you shall be instituted pursuant to section 18 of Article VI of the California Constitution and in accordance with Rules 901-922, California Rules of Court,

NOW, THEREFORE, YOU ARE HEREBY charged with wilful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute and persistent failure or inability to perform the judge's duties in the following particulars:

COUNT ONE

You are charged in Count One with wilful misconduct in office:

A. You have abused your contempt power, to wit:

1. On August 19, 1983, Nancy L. Cuskaden, a Catalina resident known to you as an indigent defendant in Catalina Justice Court Case No. 9713, appeared before you in the Catalina Justice Court in response to your order. You informed Ms. Cuskaden that you had before you a letter addressed to the Commission on Judicial Performance dated August 1, 1983, which appeared to bear her signature, and you asked Ms. Cuskaden whether that was her signature. Ms. Cuskaden invoked her right to remain silent, after which you ordered Ms. Cuskaden to appear in Department 2 of the Long Beach Municipal Court on Monday, September 12, 1983, to show cause why she should not be held in contempt.

You further informed Ms. Cuskaden that if she were found in contempt, and as a result remanded to custody, you would suggest that she be evaluated pursuant to Penal Code section 4011.6 to determine whether she was

mentally disordered.

You further informed Ms. Cuskaden that, unless she were a party or a witness, her appearance in your courtroom would constitute a direct contempt of court.

2. On September 12, 1983, Ms. Cuskaden had appeared before Judge Simpson in the Long Beach Municipal court, docket No. M195379, for contempt proceedings. The case was continued for hearing to September 26, 1983.

On September 23, 1983, you again summoned Ms. Cuskaden into your court. Ms. Cuskaden appeared before you and attempted to disqualify you under Code of Civil Procedure section 170.6. You denied her motion with the explanation that it was not a proper motion in a contempt hearing. Following testimony from Lt. Dale Goss that he had seen Ms. Cuskaden in line to board the Catalina Cruiser Boat to Long Beach at approximately 11:15 a.m. on September 12, you held Ms. Cuskaden in contempt of court for violation of your court order to appear in Long Beach. You sentenced her to five days in jail and a \$500 fine (which you advised could be served in jail at the rate of \$30 per day), and remanded her forthwith (Catalina Justice Court Case No. 10345).

That afternoon, Ms. Cuskaden was returned to your courtroom. You read to her section 5-6.04 of the

Avalon Municipal Code regarding occupancy of a room by a minor child, and inquired as to the age of her son and whether she and her son were renting a room at the Westbrook Lodge. There was no charge of violation of this Ordinance pending against Ms. Cuskaden. Following Ms. Cuskaden's invocation of her right to remain silent, you found Ms. Cuskaden to be in contempt of court on a second count. You sentenced her to serve an additional five days in jail and to pay an additional \$500 fine.

On September 28, 1983, the Los Angeles County Superior Court released Ms. Cuskaden on her own recognizance on her petition for a Writ of Habeas Corpus (Case No. APHC 000 376) and on October 19, 1983, ruled that under Code of Civil Procedure section 1211 and In re Buckley, 10 Cal.3d 237, your order finding petitioner Nancy Cuskaden guilty of contempt was fatally defective. The contempt orders were annulled.

3. On October 6, 1983, you were presiding in Division 62 of the Municipal Court of the Los Angeles Judicial District, when John D. Hamilton appeared before you in People v. Hamilton, Case No. 2393329. Following a discussion with defendant Hamilton concerning his inability to pay the balance of his fine on that date, you ordered his attache case searched. The search disclosed a knife with a

serrated blade that measured four and one-quarter inches. You asked Hamilton what was in a bag in the case and he said, "food, edibles." You found Mr. Hamilton in violation of Penal Code section 171b, which prohibits bringing a knife with a blade length in excess of four inches into a courtroom. You ordered Mr. Hamilton remanded and set bail in the amount of \$10,000.

That afternoon, Deputy Public Defender Patricia Nelson appeared on behalf of Mr. Hamilton. You found Mr. Hamilton in contempt of court under Code of Civil Procedure section 1209, subdivision a-1, in that he had entered a courtroom in possession of a knife with a blade in excess of four inches. You sentenced Mr. Hamilton to five days in jail and further ordered that he be evaluated under the provisions of Penal Code section 4011.6 to determine whether he was mentally disordered. When the deputy public defender objected to the court's order under section 4011.6, you instead imposed a \$500 fine to be served at \$30 per day.

There followed an outburst by defendant Hamilton, in which he informed you that, "Sir, you are out of order", that he was "part heir of the Gianinni family", that he was "God" and that you were "Schizophrenic", after which you found him guilty of contempt on a second and a third count. You sentenced Mr. Hamilton to five days on each additional count to be served consecutively to his

five-day sentence in count I, for a total of fifteen days, and imposed additional fines of \$500 on both counts II and III for a total fine of \$1500, to be served at the rate of \$30 per day.

4. On June 15, 1984, Nancy L. Cuskaden was present in your courtroom in Catalina. Posted in the courtroom was a sign that stated, "All Parties and Witnesses Appearing Before the Court Will Be Properly Attired." The sign specifically forbade persons from appearing before the court in swimming suits or short pants or without a shirt or shoes. Ms. Cuskaden was wearing shoes and a shirt and her legs were covered. Before court was in session, your bailiff, at your direction, advised Ms. Cuskaden that she was improperly attired and told her to leave the courtroom. Ms. Cuskaden remained in the courtroom.

When you entered the courtroom, you informed Ms. Cuskaden that there was a dress code and that she was not properly dressed. Ms. Cuskaden refused to leave and you found her to be in contempt of your order setting forth the dress code. You sentenced her to five days in jail and a \$500 fine, and ordered her remanded to custody. You further ordered that she not be allowed to make any telephone calls, according to your bailiff's notation on the booking record (a copy of which is appended hereto as

Attachment A).

Ms. Cuskaden was transported from Catalina to the Sybill Brand Institute of the Los Angeles County Jail. Later that same day, June 15, 1984, the Los Angeles County Superior Court, On Ms. Cuskaden's petition for Writ of Habeas Corpus (No. APHC 000 442), ordered Ms. Cuskaden released from custody on her own recognizance.

On July 17, 1984, the Superior Court granted Ms. Cuskaden's petition for a Writ of Habeas Corpus, and vacated and set aside your order of contempt of June 15, 1984.

5. On May 31, 1983, while you were presiding in Division 85 of the Los Angeles Municipal Court, defendant Anthony Kabbaze appeared in propria persona in case No. 842513 to request more time in which to pay a \$300 traffic fine. You refused his request and told him, "It is \$300 or ten days today." When defendant Kabbaze inquired about other parties receiving continuances, you warned him not to say anything else and then ordered, "Ten days forthwith, you are remanded." As defendant Kabbaze was directed towards the lockup, he said, "Tremendous." You then adjudged him in contempt of court and sentenced him to five days in jail, to be served consecutively and forthwith. Defendant Kabbaze then made a "s-s-h" sound, for which you held him in

contempt on a second count for an additional five days in jail, to be served consecutively.

Later that day, after Deputy Public Defender Ralph R. Olson interceded on Kabbaze's behalf, you accepted defendant Kabbaze's apology, purged the contempts, granted Kabbaze a continuance, released him from jail and gave him a stay of time to pay the balance of the fine owing.

6. On February 10, 1983, you presided over People v. Autry Lee Hatton, Los Angeles Municipal Court No. V102359. The defendant had been convicted of vehicular manslaughter and sentenced on February 10, 1982, to summary probation for two years upon the condition that he complete 500 hours of community service within the first year. When he appeared before you, defendant Hatton attempted to explain that he had a medical appointment and was in pain, when you interrupted him and told him to return at 1:30 p.m. with his attorney. You further stated that if you had to tell him that one more time, you would find him in contempt. When defendant Hatton replied, "Alright. I don't know why you are harassing me --", you held him in contempt of court and remanded him "Right now." The matter was then trailed until 1:30 p.m.

At 1:30 p.m., counsel appeared on behalf of defendant Hatton. You refused to hear counsel and

trailed the matter until the following morning. Counsel objected to trailing the matter and requested bail, arguing that defendant Hatton was having medical problems at that moment; that defendant was eligible for O.R.release; that the defendant had never failed to appear on any matter in the past; and that the defendant had a medical appointment that day. You set a 10 percent bail and ordered that defendant Hatton be medically examined at the county jail forthwith. Hatton remained in custody.

On February 11, 1983, you purged defendant Hatton's contempt.

B. You have offered unsolicited advice to other judges on cases from which you had been disqualified, to wit:

1. On June 10, 1983, in the case of People v. Bradley Scott Hughes, Catalina Justice Court Case No. 10133, the defendant had appeared before you and filed a declaration under section 170.6 of the Code of Civil Procedure. You ordered the case transferred to Division 85 of the Los Angeles Judicial District, San Pedro Branch.

Between June 10, 1983, and July 7, 1983, you wrote an unsolicited note to Judge Richard F. Charvat advising him that the "standard" sentence on the kind of violation with which defendant Hughes was charged was \$100 or three days in jail, but that defendant Bradley Hughes had

a bad attitude, and you recommended a sentence of one year on summary probation and a \$250 fine, or six days in jail. A copy of this note is appended as Attachment B.

On July 7, 1983, Judge Glenn A. Wymore dismissed the complaint in furtherance of justice on the motion of the People.

2. On March 28, 1984, in the case of People v. Nancy Louise Cuskaden, Catalina Justice Court No. M274028, the defendant filed an affidavit of prejudice against you pursuant to Code of Civil Procedure section 170.6, and you ordered the case transferred from the Catalina Justice Court to the Municipal Court of the South Bay Judicial District.

Sometime prior to May 14, 1984, you wrote an unsolicited note to Judge Gaye W. Herrington, advising her that the case of People v. Cuskaden had been transferred from the Catalina Justice Court following the filing of an affidavit of prejudice against you, and that it was your understanding that the case was set in Judge Herrington's division for Monday, May 14, 1984, at 9:00 a.m. You stated in the note, "Since I have been papered, it goes without saying I must use discretion, and not attempt in anyway to influence you or any other judge", and then advised Judge Herrington that defendant Cuskaden had "previously been

convicted by an Avalon jury, on at least 1 - and possibly 2 - recent occasions", that "it has not been possible to impanel a fair and impartial Avalon jury" and that "Any statements made by this defendant should be viewed with suspicion. On at least two occasions, this defendant has libeled my bailiff and myself. As she has no funds, a civil action for defamation would be an idle exercise. However, her ability to distort and/or lie can be most persuasive." A copy of this note is appended hereto as Attachment C.

C. You have denied defendants, or their attorneys, their full right to be heard according to law, to wit:

1. On February 14, 1984, in the case of People v. Ronald Lee Anderson (in propria persona), South Bay Judicial District Case No. T632898, the bailiff informed all the defendants present in the courtroom, prior to your taking the bench, that once you made your decision, "No other statements or objections could be made subject to being cited for contempt of court." After you took the bench, you stated in your opening remarks that whenever a defendant's statement was not in agreement with that of the police officer, you would always believe the police officer because perjury constitutes a felony and it would be unlikely that a police officer would jeopardize his career

over a minor traffic offense.

In the Anderson case, Officer Hammell testified for the prosecution. At the conclusion of the officer's testimony, defendant Anderson had begun his defense when you interrupted him to ask the officer if the speed was posted. When the officer replied that it was, you found defendant Anderson Guilty and imposed a fine and penalty assessment.

On October 17, 1984, the Appellate Department of the Los Angeles County Superior Court (Opinion No. CR A21686) reversed your order because defendant Anderson had been denied an opportunity to cross-examine the police officer and to make a closing argument.

2. The allegations contained in paragraph A., subparagraph 6., concerning the contempt case involving Autry Lee Hatton, Los Angeles Municipal Court Case No. V102359, are hereby incorporated by this reference as if fully set forth herein.

D. You have failed to conduct yourself in court proceedings in a manner that promotes public confidence in the impartiality of the Judiciary.

1. The allegations contained in paragraph C., subparagraph 1., concerning your opening remarks that

whenever a defendant's statement was not in agreement with that of the police officer, you would always believe the police officer because perjury constitutes a felony and it would be unlikely that a police officer would jeopardize his career over a minor traffic offense.

2. The allegations contained in paragraph A., subparagraph 1., concerning the contempt case involving Nancy L. Cuskaden, Catalina Justice Court No.10345, are hereby incorporated by this reference as if fully set forth herein.

3. The allegations contained in paragraph A., subparagraph 2., concerning the contempt case involving Nancy L. Cuskaden, Superior Court No. APHC 000 376, are hereby incorporated by this reference as if fully set forth herein.

4. The allegations contained in paragraph A., subparagraph 4., concerning the contempt case involving Nancy Cuskaden, Los Angeles County Superior Court No. APHC 000 442, are hereby incorporated by this reference as if fully set forth herein.

5. The allegations contained in paragraph A., subparagraph 6., concerning the contempt case involving Autry Lee Hatton, Los Angeles Municipal Court No. V102359, are hereby incorporated by this reference as if fully set forth herein.

E. You have engaged in a vengeful and punitive pattern of conduct toward the following individual defendants, to wit:

1. Nancy Cuskaden:

a. You improperly summoned Ms. Cuskaden into your court on two occasions. (See Count One, paragraph A., subparagraphs 1. and 2., pp. 2,3.)

b. You improperly jailed Ms. Cuskaden for contempt on three occasions. (See Count One, paragraph A., subparagraphs 1., 2. and 4., pp. 2,3,6.)

c. Before court was in session you ordered Ms. Cuskaden ejected for being in violation of your dress code. (See Count One, paragraph A., subparagraph 4., p. 6.)

d. You attempted to banish Ms. Cuskaden from the Catalina Justice Court by threatening her with contempt if she appeared in your court other than as a party or a witness. (See Count One, paragraph A., subparagraph 1., p. 2.)

e. You attempted to influence the disposition of a case in which Ms. Cuskaden was a defendant by improperly communicating with another judge about her. (See Count One, paragraph B., subparagraph 2., p. 10.)

f. You threatened to suggest to another judge that Ms. Cuskaden be evaluated pursuant to Penal Code 4011.6 to determine if she was mentally disordered. (See Count One, paragraph A., subparagraph 1., p. 2.)

g. You told Los Angeles County Deputy Public Defenders Loren Mandel and Tom Case that you wanted Ms. Cuskaden "off the Island [of Catalina]."

h. You refused to accept Ms. Cuskaden's Motion for your disqualification under Code of Civil Procedure section 170.6. (See Count One, paragraph A., subparagraph 2., p. 3.)

i. You questioned Ms. Cuskaden about her possible violation of Avalon Municipal Code section 5-6.04 when no charge was pending before you. (See Count One, paragraph A., subparagraph 1., p. 2.)

2. Autry Lee Hatton:

a. You improperly jailed Mr. Hatton for contempt. (See Count One, paragraph A., subparagraph 6., p. 8.).

b. On February 11, 1983, you stated to defendant Hatton that you had reviewed the record in his case and that it appeared that he had been convicted of a very serious crime and yet had received an extremely lenient sentence.

c. On February 11, 1983, you stated to defendant Hatton that he had failed to show any good faith effort to comply with the lenient sentence in that he had apparently only performed 220 hours of community service during the first year following sentencing rather than the entire 500 hours.

d. After Defendant Hatton's attorney described the defendant's medical condition (he was being treated at the Veterans Administration Hospital for a past stroke which had paralyzed his right side, as well as several other medical conditions, including high blood pressure), you summarily revoked probation and calendared a formal probation violation hearing for March 15, 1983 and ordered defendant Hatton to produce a doctor's letter that was "Something substantially more than a mere perfunctory letter from a physician."

e. On March 15, 1983, you presided over defendant Hatton's probation revocation hearing without there having been written notice of the claimed violation and despite defense counsel's objections on that ground.

f. Although you received into evidence a letter from defendant's physician, Jeff Kraut, M.D., which explained that Mr. Hatton suffered from severe hypertension and from a stroke which had left him incapacitated, thus preventing him from being capable of performing community

service, you asked him, "Did you hear this Court order you specifically to come in with something more than a perfunctory letter from the doctor?".

g. Although Defendant Hatton testified that he had suffered a stroke in 1976 which had paralyzed the right side of his body and another stroke on February 10 and 11, 1983, during the time you had found him in contempt of court and had him held in custody, that he suffered from a respiratory ailment and dermatitis over his entire body, that he was on total and permanent disability and unable to work a full 40-hour week, that, according to his physician at the Veterans Administration Hospital, he was bleeding internally and was currently under a doctor's order not to work because of that condition and that he wanted to complete the remainder of the community service hours, you summarily terminated defendant's probation, modified his sentence and ordered him remanded to county jail for 180 days forthwith without hearing argument from counsel.

On March 23, 1984, the Appellate Department of the Los Angeles County Superior Court (Case No. CR A20627) reversed your orders revoking probation and imposing sentence and remanded Defendant Hatton's case to the Los Angeles Municipal Court with directions to terminate all proceedings against him. The Appellate Department held that defendant Hatton had been denied due process of law,

that you had denied Mr. Hatton his right to present argument both at the contempt proceedings and at his probation revocation hearing and that you did not act with neutrality during defendant's probation violation hearing.

3. Bradley Scott Hughes:

a. The allegations contained in Count One, paragraph B., subparagraph 1., concerning the unsolicited note involving Bradley Scott Hughes, Catalina Justice Court No. 10133, are hereby incorporated by this reference as if fully set forth herein.

COUNT TWO

For a further and separate cause of action, you are charged in Count Two with conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

A. In support of this cause of action, paragraphs A. through E. of Count One are hereby incorporated by this reference as if fully set forth herein.

B. You have acted with unwarranted impatience, discourtesy or hostility toward unrepresented defendants in your court, to wit:

1. The allegations contained in Count One, paragraph A., subparagraph 1., concerning the contempt case

of Nancy L. Cuskaden, Catalina Justice Court No. 10345, are hereby incorporated by this reference as if fully set forth herein.

2. The allegations contained in Count One, paragraph A., subparagraph 2., concerning the contempt case involving Nancy L. Cuskaden, Los Angeles County Superior Court No. APHC 000 376, are hereby incorporated by this reference as if fully set forth herein.

3. The allegations contained in Count One, paragraph A., subparagraph 3., concerning the contempt case involving John D. Hamilton, Los Angeles Municipal Court Traffic Docket No. 421-255, are hereby incorporated by this reference as if fully set forth herein.

4. The allegations contained in Count One, paragraph A., subparagraph 4., concerning the contempt case involving Nancy L. Cuskaden, Los Angeles County Superior Court No. APHC 000 442, are hereby incorporated by this reference as if fully set forth herein.

5. The allegations contained in Count One, paragraph A., subparagraph 5., concerning the contempt case involving Anthony Kabbaze, Los Angeles Municipal Court No. 842513, are hereby incorporated by this reference as if fully set forth herein.

6. The allegations contained in Count One, paragraph A., subparagraph 6., concerning the contempt case

of Autry Lee Hatton are hereby incorporated by this reference as if fully set forth herein.

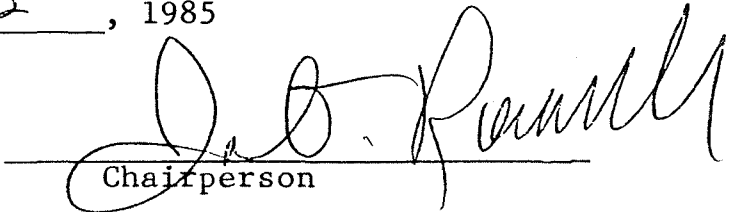
COUNT THREE

For a further and separate cause of action, you are charged in Count Three with persistent failure or inability to perform the judge's duties. In support of this cause of action, paragraphs A. through E. of Count One and paragraph B. of Count Two are hereby incorporated by this reference as if fully set forth herein.

You have the right to file a written answer to these charges within fifteen (15) days after service of this Notice upon you with the Commission on Judicial Performance, 3052 State Building, 350 McAllister Street, San Francisco, California 94102. Such answer shall be verified, shall conform in style to subdivision (c) of Rule 15 of the Rules of Court, and shall consist of the original and eleven (11) legible copies.

BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

DATED: June 13, 1985


Chairperson

**LOS ANGELES COUNTY JAIL
BOOKING AND PROPERTY RECORD**

	YES	NO
HAVE VD	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HAVE HEPATITIS	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HAVE TB	<input type="checkbox"/>	<input checked="" type="checkbox"/>
EVER HAVE TB	<input type="checkbox"/>	<input checked="" type="checkbox"/>

CIN 17632969	LOC. BKD. AUN	DR. LIC. NO. NLP	STATE
ESTEE'S NAME (LAST, FIRST, MIDDLE) USKACEN, NANCY LOUISE			
1 McPherson Ave #25 Avalon E			
Bldg 503 120 05 16 40 42			
N/A 1291 "Triton"			
High N			
OR DETAIL ARRESTING	DATE & TIME ARRESTED	TIME BKD.	
WALTON	6-15-24 0945	0950	
LOCATION OF ARREST	TOTAL BAIL		
5 Sanger Ave Avalon	2500		00
AGE	WARD/COMM. NO.		
29A-1 PO Central Court	10522		9
LOC.	ARRAIGN. DATE	TIME	COURT
WA			

PRISONER'S RECEIPT

10 2 23

17

PRISONER'S SIGNATURE WHEN BOOKED

X 10

LOCATION OR DISPOSITION OF VEHICLE

T. P. ...

RETAINED	PROPERTY	PRISONER'S SIG. FOR REC'T. OF FOREGOING CASH & PROPERTY	16
X	X	X	17

DEPOSITED	PROPERTY	PRISONER'S SIG. FOR REC'T. OF REMAINING CASH & PROPERTY	18
X	X	X	19

None taken

Judge ordered no phone call
D. Gaudin

DICK -

This Δ has a bad
attitude - my indicated
sentence is 1 yr S/P -
\$250 + P/A or 6.

(our standard on
this case is \$100 + P/A or

3 -

Thanks,
Bob

744 9055



COUNTY BLDG.
PHONE
(213) 610-0028

JUSTICE COURT
OF
CATALINA JUDICIAL DISTRICT

ROBERT H. FUREY, JUDGE

FERN WHELAN, CLERK



AVALON, CALIF. 90704
BOX 677

Mr. Gaye -

In re: People v. Nancy L. Cuskaden
M274-028

The above case was transferred from Catalina, following the filing of a 170.6 against me.

It is my understanding the matter is set in Division 2 on Monday, 5-14-84, at 9⁰⁰ AM.

Since I have been papered, it goes without saying I must use discretion, and not attempt in any way to influence you or any other judge. I believe I can state, without unduly prejudicing this defendant -

(a) One 170.6 affidavit is already on file, and that I am the subject,

(b) Although this defendant has previously been convicted by an Avalon jury, on at least 1- and possibly 2- recent occasions, it has not been possible to impanel a fair and impartial Avalon jury.

(c) Any statements made by this defendant should be viewed with skepticism. On at least two occasions, this defendant has libeled my bailiff and myself. As she has no funds, a civil action for defamation would be an idle exercise. However, her ability to distort and/or lie can be most persuasive.

Good luck - and we all are glad you back - hope your vacation was pleasant and refreshing -

Sincerely

Bob